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9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 IN RE: TFT-LCD (FLAT PANEL) ANTITRUST  
14 LITIGATION

CASE NO. 3:07-md-1827 SI

MDL No. 1827

15 THIS DOCUMENT RELATES TO:

16 Case No.: 10-cv-5254 SI

17 EASTMAN KODAK COMPANY,

18 Plaintiff,

19 v.

20 EPSON IMAGING DEVICES CORPORATION;  
EPSON ELECTRONICS AMERICA, INC.;  
21 TOSHIBA CORPORATION; TOSHIBA  
AMERICA ELECTRONIC COMPONENTS,  
22 INC.; TOSHIBA MOBILE DISPLAY CO.,  
LTD.; AU OPTRONICS CORPORATION; AU  
23 OPTRONICS CORPORATION AMERICA,  
INC.

24 Defendants.  
25

**STIPULATION AND ~~[PROPOSED]~~ ORDER  
REGARDING PLAINTIFF EASTMAN  
KODAK COMPANY'S STATE LAW  
CLAIMS**

1 WHEREAS plaintiff Eastman Kodak Company (“Kodak”) filed a First Amended Complaint in  
 2 the above-captioned case against defendants Epson Imaging Devices Corporation, Epson Electronics  
 3 America, Inc., Toshiba Corporation, Toshiba America Electronic Components, Inc., Toshiba Mobile  
 4 Display Co., Ltd., Toshiba America Information Systems, Inc., AU Optronics Corporation, and AU  
 5 Optronics Corporation America (collectively, “Defendants”) on June 9, 2011 (“First Amended  
 6 Complaint”);

7 WHEREAS Kodak’s First Amended Complaint asserts a claim for relief for violation of  
 8 California antitrust law for all U.S. purchases (Second Claim for Relief); violation of California  
 9 antitrust law for California purchases (Third Claim for Relief); violation of Nevada antitrust law for  
 10 Nevada purchases (Fourth Claim for Relief); and violation of New York antitrust law for New York  
 11 purchases (Fifth Claim for Relief);

12 WHEREAS Kodak’s Second Claim for Relief was already dismissed by the Court by order  
 13 dated August 23, 2011 (Order Granting in Part Defendants’ Motion to Dismiss Kodak’s First  
 14 Amended Complaint, Case No. 3:10-cv-05452-SI, Docket No. 32), which recognized that Kodak  
 15 sought to preserve this claim in the event the Ninth Circuit reverses the Court’s order in the pending  
 16 interlocutory appeal in the AT&T action (*see* Order Granting Plaintiff AT&T Mobility’s Motion to  
 17 Certify Under 28 U.S.C. Section 1292(b), Case No. 3:09-cv-04997-SI, Docket No. 99);

18 WHEREAS, after the filing of Kodak’s First Amended Complaint, the Court issued two orders  
 19 in the Costco action that clarified the definition of an in-state purchase for Due Process purposes and  
 20 applied choice of law principles to decide that Washington law applied to Costco’s claims, *see In re*  
 21 *TFT-LCD (Flat Panel) Antitrust Litig. (Costco I)*, Nos. M 07-1827, C 11-0058 SI, 2011 WL 3809767  
 22 (N.D. Cal. Aug. 29, 2011); *In re TFT-LCD (Flat Panel) Antitrust Litig. (Costco II)*, Nos. M 07-1827,  
 23 C 11-0058 SI, 2011 WL 5922966 (N.D. Cal. Nov. 28, 2011);

24 WHEREAS, on June 22, 2012, Defendants filed a motion for summary judgment against  
 25 Kodak (“Motion for Summary Judgment”) arguing that partial summary judgment should be granted  
 26 in Defendants’ favor as to claims brought by Kodak under the laws of California and Nevada because  
 27 Kodak did not purchase any digital cameras in those states (Docket No. 60 in Case No. 3:10-cv-  
 28 05452-SI);

1 WHEREAS Kodak and Defendants agree that, in light of the Court's decisions in the Costco  
2 action, Defendants' Motion for Summary Judgment is properly viewed as a choice of law motion;

3 WHEREAS Kodak and Defendants wish to resolve this matter efficiently without occupying  
4 the Court's time with further briefing or hearing;

5 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned  
6 counsel, on behalf of their respective clients, that:

7 1. Kodak's Third and Fourth Claims for Relief will be dismissed with prejudice.

8 2. Kodak reserves the right to pursue its Second Claim for Relief in the event the Ninth  
9 Circuit reverses the Court's order in the pending interlocutory appeal in the AT&T action.

10 3. Kodak's Fifth Claim for Relief under New York law will not be dismissed pursuant to  
11 this stipulation. Kodak expressly reserves whatever rights it may have to pursue damages for any and  
12 all purchases of LCD panels and products under the Fifth Claim for Relief, whether or not such  
13 purchases would have been the subject of the Second, Third, or Fourth Claims for Relief.

14 4. New York law will govern all of Kodak's claims, including those based on LCD panels  
15 and products negotiated and paid for from New York but shipped to California and Nevada.

16  
17 DATED: July 18, 2012

18 By: /s/ Karl D. Belgum

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Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document has been obtained from the signatories to this document.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

By: \_\_\_\_\_



Judge of the U.S. District Court, N.D. California

Date: 7/19/12